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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Utility Consumers' Action Network, Complainant, vs. SBC Communications, Inc. dba SBC Pacific Bell Telephone Company (U-1001-C) and related entities (collectively SBC), Defendants.	Case 05-11-011 (Filed November 14, 2005)
Utility Consumers' Action Network, Complainant, vs. Cox California Telecom II, LLC, doing business as Cox Communications, and related entities (collectively Cox), Defendants.	Case 05-11-012 (Filed November 14, 2005)

OPENING BRIEF OF COX CALIFORNIA TELCOM LLC (U-5684-C) IN RESPONSE TO ISSUES RAISED BY JOINT RULING DATED JUNE 26, 2006

July 24, 2006

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A. INTRODUCTION

Cox California Telcom, LLC (U-5684-C) (hereinafter "Cox") hereby submits its opening brief on the matters raised by the Joint Ruling of the Assigned Commissioner and the Presiding Officer, issued on June 26, 2006 (the "Joint Ruling"). This opening brief is submitted pursuant to the schedule established at the hearing held on July 7, 2006 and as set forth in the ALJ Ruling of July 12, 2006.

The Joint Ruling and the July 7 hearing raise the question of whether two *ex parte* meetings held on June 14 and 15, 2006 in R. 95-04-043/I. 95-04-044 constituted a violation of the ban on *ex parte* meetings in adjudicatory proceedings, as set forth in Rule 7(b) of the Commission's Rules of Practice and Procedure. The simple, and absolute, answer to this question is "no." That answer is not even remotely debatable. The ban in Rule 7(b) prohibits *ex parte* discussion of substantive issues raised in a complaint proceeding. No such discussion took place here, so there can be no finding that Rule 7(b) was violated.

As was made abundantly clear in the multiple declarations filed in response to the Joint Ruling, and in the testimony presented at the hearing on July 7, none of the discussions at the June 14 and 15 meetings concerned the substantive issues raised in either of these complaint cases. The substantive issue at stake in the complaints concerns the question of whether Cox or AT&T California violated Public Utilities Code § 2883. This was the issue raised by the complaints filed by Utility Consumers Action Network ("UCAN"). It is a factual question to be determined based on the conduct of Cox and AT&T with respect to the statute.

By direct contrast, the substantive issues discussed at the June 14 and 15 *ex parte* meetings concerned a request by Cox and AT&T, in the Commission's local competition docket, that the Commission establish a rulemaking for the development of local competition rules regarding carriers' warm line obligations under § 2883. This request was made given the prior lack of direction from the Commission and the myriad changes in competition and technology since the statute was enacted. While the same statute was at issue in this request and in the complaint cases, the substantive issues are entirely different. The rulemaking request does not involve any factual questions about the conduct of either Cox or AT&T, and it certainly does not involve the facts or substantive issues of the complaint cases.

Cox and AT&T filed the rulemaking request because the Commission itself, through its Docket Office, would not permit these parties to raise that request in the complaint cases. Cox and AT&T followed the Commission's direction in filing a separate request for rulemaking, in a docket separate from the complaint proceedings. Once they had done so, they were fully justified, and acted appropriately under the Commission's rules, in holding *ex parte* meetings with Commission advisors. Those meetings concerned the substantive issues addressed by the petition for rulemaking about the need for an industry-wide proceeding on § 2883.

The Commission should take careful note that one of the meetings included a legal advisor to Commissioner Brown and the other meeting included an advisor who is a former Administrative Law Judge. Both of these advisors were aware of the complaint cases at the outset of the *ex parte* meetings and, had there been any question about the appropriateness of the meetings, they could have put an immediate halt to the discussion.

The fact that they did not is another clear indication that there was nothing untoward about either meeting.

The suggestion of a violation of the *ex parte* rules in these cases is extremely troubling to Cox. It has always acted with the utmost concern for the Commission's rules and would never take any action to violate those rules. This is just as true for Cox's counsel as for the company itself. Cox is particularly concerned with the statements in the June 26 Joint Ruling, before any evidence at all had been elicited, that it appeared a violation of the *ex parte* rules had occurred. There has been no such violation and the Commission should be extremely careful in suggesting there had been.

Accordingly, Cox requests that the Commission issue an order finding that none of the violations suggested by the Joint Ruling occurred. Cox further requests an explicit finding by the Commission that Cox and its counsel acted entirely in accordance with the Commission's rules.

B. DISCUSSION

1. Factual Background

The complaint filed against Cox by UCAN in November, 2005 is quite straightforward. It contends that Cox violated § 2883 of the Public Utilities Code by not providing warm line 911 under certain conditions. The resolution of the complaint turns solely on the application of Cox's factual behavior to the terms of that statute. The issues raised in the complaint case against AT&T are of the same factual nature.[1]

[1] Cox notes that UCAN has moved to dismiss its complaint against Cox. While that motion has not yet been ruled upon, Cox expects that it will be granted.

On May 18, 2006, Cox and AT&T attempted to file a motion to dismiss the complaints and to request the Commission to open a rulemaking on the interpretation of § 2883. The Commission's Docket Office never formally accepted that motion, because it determined that Rule 2.1 of the Commission's rules prohibited such a motion (which sought two forms of relief).[2] The Docket Office then provided several options to Cox and AT&T to proceed that required the filing of separate pleadings for the two forms of relief sought.

Thus, on June 2, 2006, at the Docket Office's express direction, Cox and AT&T filed a Motion to Establish Industrywide Rules regarding all carriers' warm line obligations under Section 2883 in R. 95-04-043/I. 95-04-044, the local competition proceeding, Cox and AT&T filed the motion in the local competition proceeding because that proceeding had been used in a number of instances to address industry-wide matters related to the provision of competitive local telecommunications services, including the existing warm line requirements,[3] and because that docket had the service list of all the carriers that would potentially be affected by a review of § 2883 issues.[4]

At the same time that they filed their motion in the local competition proceeding, Cox and AT&T requested a stay of the respective complaint cases. Their reasoning was quite simple: an industry-wide analysis of § 2883 might inform the application of the law to the factual issues raised by UCAN, and thus it might be a better use of resources to adjudicate the factual issues raised in the complaint cases once that industry-wide analysis

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[2] This information from the Commission came in the form of an email from Maria Vengerova of the Commission's Docket Office, sent to Stephanie Holland on May 19, 2006 at 12:41 pm.

[3] See D.96-02-072.

[4] Transcript, July 7, 2006, pp. 36-37.

had been completed. While the two parties were hopeful that the complaints would be dismissed, that was neither a necessary nor likely outcome of the rulemaking motion. Moreover, nothing in the motion for rulemaking sought to address, in any manner, the factual questions about the conduct of Cox or AT&T that had been raised by UCAN in its complaints.

2. The *Ex Parte* Meetings

The two *ex parte* meetings at issue here took place on June 14 and June 15, 2006. They are described in great detail in the declarations filed on June 30, 2006 in response to the Joint Ruling, as well as at the evidentiary hearing held on July 7, so Cox will not repeat that information here.[5] Cox does specifically note that all of the evidence before the Commission with respect to the two meetings, whether through the declarations of June 30 or the testimony at the July 7 hearings, supports only one conclusion – the two meetings did not address, in any manner, the substantive issues raised in the complaint cases. There simply is no contrary evidence and thus there is no evidence upon which the Commission can determine otherwise.

Cox also notes two extremely important facts about the *ex parte* meetings. First, at each of the meetings, the Commission advisors present were advised in specific detail about the existence of the complaint cases and that the purpose of the meeting specifically excluded any discussion or consideration of those cases. At each meeting, the advisors

[5] The declaration were filed by Margaret Tobias (Exhibit 1), Stephanie Holland (Exhibit 2), Fassil Fenikile (Exhibit 3), Douglas Garrett (Exhibit 4), and Rhonda Johnson (Exhibit 5).

were asked if they had any concern about moving ahead with the meetings in light of those circumstances and, in each case, they stated that they did not.[6]

Second, the June 14 meeting included a Commission advisor who is a former administrative law judge of the Commission, and the June 15 meeting included the legal advisor to Commissioner Brown.[7] Both of these advisors are, by the very nature of their experience and positions, fully aware of the intricacies of the Commission's *ex parte* rules. At no time did either of these two advisors suggest that there was any problem with holding the *ex parte* meetings, nor did either of them suggest at any time that the meetings should not proceed.[8] Indeed, Commissioner Brown's legal advisor followed up the June 15 meeting with an email message stating that the Commission would evaluate whether the petition for rulemaking could be granted.[9]

Both of these circumstances are highly significant with respect to the compliance by Cox with the Commission's rules. Although Cox is fully aware that it is responsible for its own compliance with those rules, it would be disingenuous of the Commission to allow senior officials, like the four advisors involved here, to participate in *ex parte* meetings with the knowledge described above and then for the same Commission to find that the industry participants were in violation of the Commission's rules.[10]

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[6] Exhibit 3, ¶¶ 10, 17; Exhibit 4, ¶¶ 10, 11, 15, 16 and 25.

[7] Exhibit 4, ¶ 25.

[8] Id.

[9] Exhibit 3, ¶ 20 and Exhibit C; Exhibit 4, ¶ 21.

[10] Moreover, the statement made at the July 7 hearing that decisionmakers "sometimes . . . want to hear more than they should. . . ." and that "they're not the best referee of their own ex parte rules . . ." is fairly surprising. (See Transcript, July 7, 2006, p. 15 (statement by Commissioner Brown). The Commissioners and their advisors have an obligation to act with the utmost integrity. They simply cannot be permitted to tell a party that an *ex parte* meeting is acceptable, knowing all the relevant facts, and then later determine that the meeting violated the Commission's rules.

Cox should be entitled to ask these advisors whether it is acceptable to proceed given the circumstances. Once assured that there is no problem, and with discussion in the meeting limited to the subjects of the joint motion, Cox should be able fairly to rely on the conduct of those advisors without fear that the Commission will second-guess the advisors in hindsight.

3. Cox Did Not Violate The Commission's *Ex Parte* Rules

The Joint Ruling asks whether the June 14 and 15 meetings violated the Commission's ban on *ex parte* meetings in adjudicatory proceedings. This question turns on two simple analyses:

1) What does the *ex parte* ban in Rule 7(b) actually prohibit?

2) Did the substantive discussions at the two meetings constitute a violation of that prohibition?

A straightforward analysis of the facts presented here demonstrates that no violation has occurred.

(a) What Does The *Ex Parte* Prohibition Of Rule 7(B) Actually Prohibit?

Rule 7(b) prohibits *ex parte* communications in adjudicatory proceedings. Rule 5(e) defines an *ex parte* communication to be a communication that "concerns any substantive issue in a formal proceeding." Thus, the first question faced here is what is meant by a "substantive issue" in a proceeding.

The rules provide no further explanation of this term. In an adjudicatory proceeding, however, the rules clearly provide that the Commission is being asked to determine whether a regulated entity has committed "any act or thing, done or omitted to

be done," [11] or violated any statutory law or order or rule of the Commission.[12] Thus, it is fairly reasonable to conclude that the "substantive issues" in a complaint proceeding, such as those presented here, concern whether or not the regulated entity (here Cox and AT&T) has acted to violate a statute, order or rule. This is consistent with the UCAN complaints, which contend that Cox and AT&T violated § 2883 of the Public Utilities Code.

The adjudication of the two complaints, therefore, is based on the factual question of whether conduct of Cox or AT&T was a violation of the statute. It turns entirely on their conduct in meeting the obligations of the statute. If their conduct violated the statute, then UCAN is entitled to a judgment, but if their conduct did not violate the statute, UCAN's complaints should be rejected. Thus, determination by the Commission with respect to the complaints requires an evidentiary hearing into the factual compliance by the two companies with the terms of the statute. The "substantive issues" in the complaint proceedings, therefore, are the factual activities of the two regulated entities.

Under this straightforward analysis, the *ex parte* ban of Rule 7(b) prohibits Cox and AT&T from having any *ex parte* communication at the Commission about their factual behavior, as addressed in the UCAN complaints. They cannot discuss any of their specific actions related to the complaint filed by UCAN. They cannot discuss whether or not they complied with § 2883, nor can they discuss whether any of their conduct was a violation of § 2883. Finally, they cannot discuss the relief sought by UCAN nor the question of whether or not UCAN is entitled to such relief from the Commission.

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[11] See Commission Rule of Practice and Procedure 9.

[12] Rule 5(b) separates out "enforcement proceedings" and "complaints," but they fall within the same definition and this provision fits the nature of the UCAN complaints here.

As is explained in detail below, Cox did not violate this prohibition. None of these issues was addressed at the June 14 or 15 meetings.

(b) The Sole Purpose Of The *Ex Parte* Meetings Was To Inform The Advisors With Respect To The Petition For Rulemaking

The June 14 and 15 meetings with the Commission advisors were held for one purpose only – to inform them about the details of the June 2 petition for rulemaking filed by Cox and AT&T. The declarations filed on June 30, as well as the testimony at the July 7 hearing, make this point abundantly clear. Both Cox and AT&T, having filed a petition for rulemaking in a quasi-legislative proceeding, exercised their standard rights under the Commission's rules to hold *ex parte* meetings regarding that petition.

Moreover, the Cox and AT&T representatives made it quite clear to the advisors, at the outset of each meeting, that they had absolutely no intention of discussing any of the substantive issues raised by UCAN's complaints. This was explained in detail in the declarations filed on June 30. For example, Mr. Garrett of Cox stated this as clearly as possible in describing the June 14 meeting:

> There was never any intent on my part (nor any other parties' part, so far as I know) that this meeting would address, in any manner, the substantive issues in the complaint case. . . .
>
> At the outset of the June 14 meeting, Mr. Fenikile advised Mr. Sullivan and Mr. Wong that the parties who had requested the meeting specifically did not want to address any substantive issues in C. 05-11-011 or C. 05-11-012. I confirmed my support for Mr. Fenikile's statement. I was specifically aware, prior to and at the time of the June 14 meeting, that no *ex parte* communications were permitted with respect to C. 05-11-011 and C. 05-11-012. During the meeting, neither I nor anyone else present discussed the complaint cases other than to confirm their existence and emphasize that the purpose of our meeting was not to discuss those cases.[13]

[13] Exhibit 4, ¶¶ 9 and 10. Mr. Garrett made the same statements about the June 15 meeting as well.

The testimony confirms this as well. For example, Mr. Fenikile of AT&T testified that he advised Lester Wong, advisor to President Peevey, at the time the first meeting was arranged, that the complaint cases could not be discussed:

> I called Mr. Wong to set up the meeting. And during the portion of a short conservation I had with him, I did indicate to him the subject of the meeting that we wanted to have with him, and also mentioned to him the statutes that we will be talking about is mentioned or is part of the complaint proceeding. And I asked him specifically, you know, whether that would be an issue for the meeting.[14]

Mr. Garrett of Cox similarly testified about the meetings as follows:

> I recall reiterating Mr. Fenikile's opening comments that we didn't want to discuss anything about the complaint cases.[15]

In response to direct questions from Commissioner Brown, Cox's counsel, Margaret Tobias, directly supported these statements:

> Q Now, when you walked in and saw the advisors -- the respective advisors to the Commissioners -- did you say, "Look. We have a problem here. And tell us when you think we're going over the line," or "We have to be careful not to go over the line"? Did you say anything of that nature?
>
> A I did not state that. . . . However, there were other participants in the meeting that said that. Both Mr. Fenikile and Mr. Garrett stated that. And I didn't think it was necessary to state it a third time, but we -- you know, it was acknowledged, and we were very careful about that.[16]

This evidence was clear, strong and uncontested. It shows, in no uncertain terms, that the participants in the *ex parte* meetings specifically excluded the complaints cases from their discussions.[17]

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[14] Transcript, July 7, 2006, p. 42.

[15] Transcript, July 7, 2006, p. 47.

[16] Transcript, July 7, 2006, p. 14.

[17] In the face of all of this direct evidence, it is unclear why none of the four Commission advisors were called to testify at the July 7 hearing. If the Commission truly seeks to determine whether the substantive

(c) The *Ex Parte* Rule Was Not Violated Because None Of The Substantive Issues In The Complaint Cases Were Discussed At The Two Meetings

Once it is clear what Rule 7(b) prohibits, and once it is clear what was discussed at the June 14 and 15 meetings, there can be no conclusion but that the rule was not violated. The rule says that a party to an adjudicatory proceeding cannot discuss substantive issues in the case with a decisionmaker. The facts in this case demonstrate that none of the substantive issues in the complaint cases were discussed at the two meetings. The only conclusion possible is that Cox acted in full accord with the Commission's rules.

The matters discussed at the June 14 and 15 meetings did not concern any conduct of Cox or AT&T. They did not concern any question about whether or not Cox or AT&T had violated § 2883 of the Public Utilities Code. They did not concern any of the factual allegations raised by UCAN in its complaints. These are the substantive issues addressed in the complaint cases, and they simply were not discussed at either of the two *ex parte* meetings. No evidence suggests otherwise.

In fact, the only issues addressed at the June 14 and 15 meetings were the need to adopt industry-wide rules regarding § 2883. This is what the declarations and the July 7 testimony demonstrated. This is what was included in the presentation materials at the two meetings.[18] Moreover, as was explained at the hearing by Mr. Garrett, these were not substantive issues in the complaint cases:

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issues of the complaint proceedings were discussed at either meeting, it is incumbent on the Commission to ask that question of all of the participants at the meeting. Given the facts, it is certain that each of the four advisors would confirm that the only matter discussed at the meetings was the petition for rulemaking filed in R. 95-04-043/I. 95-04-044. It is also certain that each of them would confirm that they were advised specifically that the substantive issues of the complaint cases were not to be part of the discussion. Such information is highly relevant to the issues raised here.

[18] See Exhibit A to the Garrett Declaration (Hearing Exhibit 4).

> Q Mr. Garrett, does the UCAN complaint filed against Cox, does it request any sort of relief where it asks the Commission to implement Section 2883 of the PU Code or 911 rules?
>
> A No, I don't believe it does.
>
> Q In fact, in UCAN's acquisition (sic – should say "opposition") to the what is being called the Rules Motion, UCAN indicated that it did not seek to establish any sort of industry-wide policy regarding compliance with Section 2883, correct?
>
> A That's correct.[19]

The record here is clear: UCAN's complaint against Cox was based on Cox's past behavior. The June 2 petition for a rulemaking and the *ex parte* meetings concerned prospective, industry-wide consideration of rules related to § 2883. The complaint and the petition did not concern the same substantive issues. Thus, as shown by the facts of this case, it is clear that Cox did not violate the prohibition of Rule 7(b).

(d) The Petition For Rulemaking Can Not Be Viewed As Having Been Filed In An Effort To Allow *Ex Parte* Discussion Of The Complaint Cases

Finally, to find an *ex parte* violation despite clear and contrary evidence, one could postulate that the filing of the petition for rulemaking was submitted as an effort to allow the moving parties the opportunity to discuss substantive factual complaint issues –what the defendants did or did not do that violated legal requirements -- with the Commission advisors. But if that were the case, then there would have had to have been some discussion of the substantive factual complaint issues at the *ex parte* meetings. This, of course, simply did not occur. In short, the facts do not fit the theory.

[19] Transcript, July 7, 2006, pp. 44-45.

During the July 7 hearing, this theory was raised. In questioning Cox's counsel, it was suggested that the purpose of the *ex parte* meetings was to have some "implication" for the complaint cases:

> ALJ THORSON: Q I think you've indicated in your declaration which has been introduced, Exhibit 1, that, quote, you did not engage in any ex parte communications with the intent of influencing substantive issues. Do you recall indicating that in your declaration?
>
> A Yes, your Honor.
>
> Q The joint motion for rulemaking filed in the Local Competition Docket, it was signed by you, has at least 9 or 10 references to UCAN or to UCAN's complaints either direct references or indirect references. *How can we avoid the conclusion that by advancing that motion with the advisors that there would not be some implication for UCAN's complaints in the adjudications?*[20]

The simple answer to this rhetorical question is that the "conclusion" should be rejected. Indeed, given the facts as presented to the Commission, that conclusion **must** be rejected. It is absolutely wrong for a number of reasons.

The idea of an "implication," or a "militating" or "dampening" effect, arising from the petition for rulemaking, is quite difficult to apply here. For example, much was made at the July 7 hearing of the statement by Cox and AT&T in their motion for a stay that "[i]n the event the Commission grants the Local Competition Motion, it follows that the Complaints ultimately would be dismissed."[21] However, each time one of the witnesses was asked about this, they responded that the issue of dismissal of the complaint cases was merely an argument being put forward in the motion to stay. It does not appear in the

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[20] Transcript, July 7, 2006, p. 7 (emphasis added). There was, at the hearing, another similar question, wondering if the petition for rulemaking would have a "militating" or "dampening" effect on the complaint cases. Transcript, July 7, 2006, pp. 8, 10.

[21] Exhibit 8, pp. 2-3. See Transcript, July 7, 2006, pp. 9-11, 26-27, 39-40.

Motion for Rulemaking. The Motion for Stay was not provided to the Commissioner advisors with whom Cox and AT&T met. Further, no party testified at hearing or in their declaration that they brought up, let alone discussed, the contents of the motion to stay at the meetings with the Commissioner advisors. Furthermore, Mr. Fenikile expressly testified that he did not believe the complaint cases would be dismissed even if the rulemaking were commenced.[22]

The June 2 request for rulemaking in the local competition docket was a legitimate effort to request the Commission to address an industry-wide issue on an industry-wide basis. It asked the Commission "to establish a comprehensive set of rules delineating the specific obligations of local telephone companies under Section 2883 to provide warm dial tone."[23] This was not a request that the Commission adjudicate the facts of the complaint cases, nor was it a request that it determine whether Cox or AT&T was liable for the damages sought by UCAN in those cases. Moreover, the request for rulemaking did not itself ask that the pending complaints be dismissed, and that subject was not addressed at the *ex parte* meeting. The June 2 request was a proper approach, recommended directly by the Commission's Docket Office itself, after Cox and AT&T unsuccessfully tried to raise the matter in the complaint cases.

This is a very unusual situation. Every single witness in this case has testified that there was never any discussion at the two *ex parte* meetings of the substantive issues of the complaint cases. Every single witness in this case has testified that there was no intent at the *ex parte* meetings to affect the complaint cases in any way. If the Commission were to

[22] Transcript, July 7, 2006, p. 40. See also p. 10, where Ms. Tobias noted that the Commission could grant the petition while at the same time not stay or dismiss the complaint cases.

[23] Exhibit 7, p. 10.

adopt the "implication" theory of an *ex parte* violation, it would have to issue a ruling finding that all five of the declarants in this case, four of who testified in person at the July 7 hearing, were lying.[24] There is no other way to get to that result.

But of course none of these witnesses was lying, and there is no evidence whatsoever contrary to their testimony. The theory of an "ulterior motive" simply does not work. If Cox or AT&T had wanted to influence the advisors with respect to the complaint cases, they would not have gone to such great lengths to inform the advisors that the meetings were *specifically not about the complaint cases*.

At the very least, one might have expected a party seeking such influence to have downplayed the impact on the complaint cases, hoping to have a subtle effect. Yet here the advisors were told, in no uncertain terms, that the meetings were not about the complaint cases. The declaration of Mr. Fenikile of AT&T specifically demonstrates that the advisors were even given the opportunity to cancel the meetings if they felt that anything was wrong, but none of them did:

> In both meetings with the Advisors, I specifically informed all in attendance at the outset that the purpose of the meeting was to discuss the joint AT&T California / Cox request set forth in the Rules Motion for a generic rulemaking regarding Section 2883 of the California Public Utilities Code in the Local Competition Docket. I cautioned all in attendance that we were not there to, and could not, discuss substantive issues of UCAN's complaint proceedings against Cox and AT&T. My recollection is that Mr. Garrett echoed my statements of caution in both meetings. Having made that pronouncement, I waited to see if there were any concerns. None of the attendees expressed any concerns about the nature of the meeting or the topic we were about to discuss.[25]

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[24] Moreover, the Commission would have to disregard the declaration filed by Thomas McBride (Exhibit 11). Mr. McBride is a long-time practitioner before the Commission and his background qualifies him as an expert witness on the issues raised here. Mr. McBride stated his opinion, in no uncertain terms, that none of the conduct present here constituted a violation of the Commission's *ex parte* rules. (Exhibit 11, ¶¶ 11-12, 14-17.) There was no contrary expert testimony on which the Commission can rely.

[25] Exhibit 3, ¶ 10.

It is unreasonable for anyone reasonably to conclude, under the facts as they have been presented, that Cox or AT&T held the two *ex parte* meetings on the petition for rulemaking solely as an effort to influence the four advisors on the complaint cases.

C. CONCLUSION

There is no question but that the complaint cases and the petition for rulemaking both concern § 2883 of the Public Utilities Code. But that only begins the inquiry; it does not resolve the issues raised by the June 26 Joint Ruling. Indeed, the mere fact that § 2883 was addressed in both the complaint cases and the petition for rulemaking does not, by any means, require the conclusion that the two *ex parte* meetings on the petition were an effort to affect the complaint cases.

One has to look carefully at all of the facts as they were adduced in the June 30 declarations and at the July 7 hearing. Having done so, one can only conclude that Cox was not discussing any substantive issue of the complaint cases when it met with the advisors on the petition for rulemaking. There thus can be no finding of a violation of the *ex parte* rules.

[*continued on next page*]

Accordingly, Cox requests that the Commission issue an order finding that none of the violations suggested by the Joint Ruling has occurred. Cox further requests an explicit finding by the Commission that Cox and its counsel acted entirely in accordance with the Commission's rules.

Dated: July 24, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for which an electronic mail address has been provided, this day served a true copy of the original attached **OPENING BRIEF OF COX CALIFORNIA TELCOM, LLC (U-5684-C) WITH RESPECT TO ISSUES RAISED BY JOINT RULING OF JUNE 26, 2006** on all parties of record in this proceeding or their attorneys of record.

Dated July 24, 2006 at Lafayette, California.

Joseph S. Faber

Counsel for Cox
California Telcom, LLC

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists
Proceeding: C0511011 - UCAN VS SBC COMMUNIC
Proceeding: C0511012 - UCAN VS COX CALIFORN
Filer: UTILITY CONSUMERS' ACTION NETWORK
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